

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
ABDELHAFIZ M. NOFAL,

Plaintiff,

Case No. 22-CV-03104

**AFFIDAVIT OF PLAINTIFF
ABDELHAFIZ NOFAL**

-against-

IMCMV TIMES SQUARE LLC d/b/a
MARGARITAVILLE RESORT TIMES SQUARE,

Defendant.

-----X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

ABDELHAFIZ M. NOFAL, being duly sworn, deposes and says as follows:

1. I am the Plaintiff in the above-captioned action. As such, I am fully familiar with the facts and circumstances surrounding this action. I give this testimony based upon information and belief to the best of my recollection.
2. I submit this Affidavit in support of my Opposition to the Defendant's Motions for Summary Judgment in conjunction with Plaintiff's Memorandums of Law in Opposition, and all exhibits annexed hereto.
3. I am a father of three, and have over forty years of experience in the food industry.
4. I follow Islam, and because I am Muslim, I do not eat pork.
5. Although I suffer from diabetes, I am able to do my job as a cook.
6. In or around June 2021, I started working at Margaritaville, located at 560 7th Avenue, New York, NY 10018.
7. I applied for the position of a Tournant. A Tournant is a person who works at various stations, such as grill, sautee, broiler *etc.* Ultimately, I was hired as a Sous Chef at Margaritaville, and was paid \$18.00 per hour.

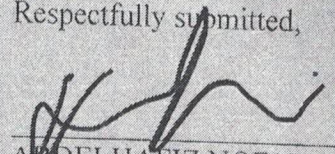
8. I reported directly to Natalie Cohee, the Executive Chef. Natalie Cohee was aware of my diabetes, because I provided her with my doctor's note and even showed her a picture of my injured toe.
9. Prior to July 26, 2021, when I took a short-term disability leave related to my diabetes, I was consistently working forty hours per week or more.
10. From July 26, 2021 to August 26, 2021, due to my diabetes, I had to undergo and recuperate from a surgery, which unfortunately resulted in amputation of my toe.
11. On August 18, 2021, I reached out to Natalie Cohee regarding my anticipated return to work on August 26, 2021.
12. To my surprise, Natalie Cohee informed me that my 90-day probation period would re-start on August 26, 2021.
13. To my knowledge, no other employee at Margaritaville had to re-start his/her 90-day probation period.
14. When I returned to work from my short-term disability leave on August 26, 2021, Natalie Cohee cut my hours from forty to only twenty hours per week.
15. None of the other similarly situated employees without disability (Bianca, Carla, Carolina, Christopher, Erica, Jasmine, Joseph, Kaith, Kerel, Khadilah, Laveli) had their hours cut by Natalie Cohee.
16. Other line cooks without disability (Christopher, Manual and Marcelo), who did exactly the same duties as I did, did not have their hours cut by Natalie Cohee.
17. Margaritaville cut my work hours because of my disability.
18. As if it was not enough, following my return from my short-term disability leave, I was assigned to work materially worse duties, such as cleaning. I was also given less time (only forty-five minutes to an hour) to prepare for the food service, while other employees without disability were allowed to have three hours or more for such preparation.
19. In addition, Natalie Cohee constantly asked me to sweep the floor, run back and forth to the storage room, while yelling, while not treating other employees without disability in a similar manner.
20. While cutting my work hours, and assigning me to sweep the floor, I noticed that Margaritaville was constantly hiring new, less qualified than me, employees without disability to perform my duties.
21. Following my return from my short-term disability leave, I was limping, which was seen by other Margaritaville employees, including my immediate supervisor, Natalie Cohee.

22. Natalie Cohee repeatedly demanded from me to "move!", "move!", "move!" along the 30ft long station ignoring the fact that I was obviously limping due to my disability.
23. When I complained to Natalie Cohee that her treatment of me was discriminatory, she responded that the breakfast shift was the only shift available to me. This, however, was not true, because Margaritaville constantly hired new employees for various shifts, including grill and saute stations, where I worked prior to taking my short-term disability leave.
24. Following my complaints about discrimination on or about September 3, 2021, Natalie Cohee called Mr. Pereira, the Director of Employee Relations, HR and general counsel, and placed him on a speakerphone.
25. I complained to Mr. Pereira that I felt discriminated against on the basis of my disability. Mr. Pereira took notes, and promised to get back to me, but never did.
26. Contrary to the Defendant's allegations, I never told Mr. Pereira that I was a breakfast cook and wanted to work only morning shifts. At the time of my hire I specifically indicated to Mr. Edem, who ultimately hired me, that although I preferred to work in the morning, I was interested in breakfast shifts only if it was full time. Mr. Edem told me that I would be working on the grill and saute stations until Margaritaville would open the breakfast shift full time.
27. When I returned from my short-term disability leave, however, Natalie Cohee removed my forty hours that I worked at grill and saute stations, and assigned me to work only twenty hours per week or less, even though I repeatedly protested against her discriminatory practices.
28. On or about September 6, 2021, the hostile work environment at Margaritaville even more escalated, when Natalie Cohee told me that although she knew I am Muslim, I should try pork to do my job as a cook at Margaritaville. I objected, saying that while I do not eat pork according to my religion, I can cook it. When I protested, and inquired from Natalie Cohee why she was making those comments, which were obviously very offensive to me, she replied that if I did not like it, I should go home.
29. On September 9, 2021, I received a call from Michael, the manager, who instructed me to come in to work at 12.30p.m. the next day.
30. When I arrived on September 10, 2021, as requested, I was told by Natalie Cohee and Ms. Featherby (in charge of Food & Beverage) that my employment at Margaritaville was terminated for some unspecified performance issues.
31. I was told to sign a document, but was not allowed to review or have a copy of the document I was told to sign. Naturally, I refused to sign that document.

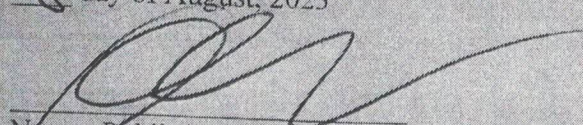
32. As I understand, Natalie Cohee signed a Declaration, stating that “most employees were no longer scheduled the maximum amount of hours they could work”. This, however, is not true, because based on the work schedules, it is obvious that all employees, except me, continued working forty hours per week or more following my short-term disability leave.
33. As I understand, Chris Casciello, an assistant general manager, also produced a Declaration in support of the Defendant's motion for summary judgment. Notably, Mr. Casciello is still working at Margaritaville, and I strongly believe he signed that statement only because he is afraid to lose his job at Margaritaville.
34. In his Declaration, Mr. Casciello only states that he witnessed “an incident” between Natalie Cohee and myself”, but does not specify what incident he is referring to.
35. As I understand, Michael Roberts, the general manager, also signed a Declaration in support of Margaritaville’s motion. Again, I strongly believe Michael signed that document only because he is afraid to lose his job at Margaritaville.
36. According to Mr. Roberts, I allegedly ignored my supervisor, did not acknowledge her, and refused to do what she had requested me to do. I have been working in the food industry for over forty years. I never disrespect my supervisor, and always follow the instructions of my superiors.
37. As I understand, Margaritaville alleges that I left early on September 6, 2021. However, it was Natalie Cohee who instructed me to leave if I did not like her discriminatory comments regarding my religion. In any event, I left work upon completion of my 8-hour shift, as per Margaritaville’s policy.
38. As I understand, Robert Taylor, the security guard, also signed a Declaration in support of the Defendant’s motion.
39. In his statement, Mr. Taylor alleges that at 6.55a.m. he witnessed me being insubordinate to Natalie Cohee. Notably, the timing of an alleged incident, witnessed by Robert and Chris, does not match (according to Chris, the unspecified incident took place at 11.30a.m.) The Defendant’s story clearly does not add up.
40. Based on the foregoing, I strongly believe that my termination from Margaritaville was motivated by my disability, religion and my complaints about discrimination, not my performance.
41. Margaritaville’s discriminatory practices caused me to suffer severe emotional distress, depression, lost wages and other damages.

42. I respectfully request this Court to deny the Defendant's motion for summary judgment.

Respectfully submitted,


ABDELHAFIZ NOFAL

Sworn to before me this
8 day of August, 2023


Notary Public/State of New York

OLENA TATURA
Notary Public, State of New York
No. 01TA6346956
Qualified in Queens County
Commission Expires August 22, 2024 